

**THIS DISPOSITION
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JQ

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Donlar Corporation

Serial No. 75/426,148

Wendy K. Marsh of Zarley, McKee, Thomte, Voorhees & Sease
for applicant.

Farah Bhatti, Trademark Examining Attorney, Law Office 115
(Tomas Vlcek, Managing Attorney).

Before Simms, Hanak and Quinn, Administrative Trademark
Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application has been filed by Donlar Corporation to
register the mark MAGNET for "agricultural products, namely
a fertilizer enhancer for fruits and vegetables."¹

The Trademark Examining Attorney has refused
registration under Section 2(d) of the Trademark Act on the
ground that applicant's mark, if applied to applicant's

¹ Application Serial No. 75/426,148, filed January 30, 1998,
alleging a bona fide intention to use the mark in commerce.

goods, would so resemble the previously registered mark MAGNEX for "combination greening ingredient incorporated in a fertilizer"² as to be likely to cause confusion.

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney submitted briefs, and both appeared at an oral hearing.

Applicant argues that the marks neither look alike nor sound alike. Moreover, applicant asserts that its mark MAGNET is an ordinary word with a commonly understood meaning³ and that, therefore, it creates a commercial impression different from that of registrant's mark MAGNEX which, according to applicant, is suggestive of magnesium, a component for creating green color in plants. Applicant also contends that the formative "MAGN-" is weak in the plant chemicals field, pointing to the existence of seven third-party registrations of such marks which applicant has made of record. Applicant further asserts that the involved products are different, and that they are marketed to different customers with different product needs in different channels of trade.

² Registration No. 902,020, issued November 10, 1970; renewed.

³ Although applicant referred to a dictionary listing of the term, a copy of the definition was not submitted. Such evidence, however, is proper subject matter of judicial notice. Accordingly, as indicated below, we have considered the dictionary definition.

The Examining Attorney maintains that the marks MAGNET and MAGNEX are similar in appearance and sound, differing by only the last letter. According to the Examining Attorney, both marks are arbitrary and convey the same commercial impression. The Examining Attorney discounts applicant's third-party registration evidence, contending that, in any event, even weak marks are entitled to protection against similar marks for similar goods. The Examining Attorney also contends that the goods are similar in that "both goods are ingredients of fertilizers, one which is used to 'enhance', and the other to 'green' specific items, such as plants or grass." (brief, p. 4) The Examining Attorney has relied upon three Web pages of third parties to illustrate the relatedness of fertilizers and enhancers.

Our determination under Section 2(d) is based on an analysis of all of the facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

We first turn to compare the marks MAGNET and MAGNEX. We find that, although the marks differ by only one letter, the difference between the letters "T" and "X" results in marks which are specifically different in sound, appearance and, most significantly, in meaning. As to meaning, the term "magnet" is defined as "something that attracts." *Webster's Third New International Dictionary* (1993) We agree with applicant that this term has a commonly understood and recognized meaning which, when applied to applicant's goods, is somewhat suggestive of a product used to "attract" nutrients to the fruits and vegetables being grown. The mark MAGNEX appears to be a coined term with no readily discernible meaning, other than it might be viewed as somewhat suggestive of magnesium which, according to applicant, is a chemical used to create green color in plants. Our view is that any similarities in sound and appearance are outweighed by the significant differences in meaning and overall commercial impression.

Insofar as the goods are concerned, we must compare them as identified in the involved registration and application, that is, "combination greening ingredient incorporated in a fertilizer" and "agricultural products, namely a fertilizer enhancer for fruits and vegetables." The goods, although appearing to be related fertilizer

products, are nevertheless specifically different. Registrant's product is identified as an ingredient, specifically designed for greening up vegetation, included in a finished fertilizer product. Applicant's product, on the other hand, is identified as a finished fertilizer product for fruits and vegetables.

While we have considered the seven third-party registrations submitted by applicant, this evidence is of little probative value in deciding the issue of likelihood of confusion in this case. The registrations do not establish that the marks shown therein are in use, much less that consumers are so familiar with them that they are able to distinguish among such marks by focusing on components other than the ones shared by the marks. *AMF Inc. v. American Leisure Products, Inc.*, 474 F.2d 1403, 177 USPQ 268 (CCPA 1973).

In sum, in view of the specific differences between the goods and, most especially, between the marks, we find that the cumulative effect is that confusion is unlikely to occur in the marketplace among consumers.

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Decision: The refusal to register is reversed.

R. L. Simms

E. W. Hanak

T. J. Quinn
Administrative Trademark
Judges, Trademark Trial
and Appeal Board